

ASSEMBLY BILL

No. 1030

Introduced by Assembly Member Umberg

February 22, 2005

An act to amend Section 107 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1030, as introduced, Umberg. Property taxation: possessory interests.

Existing property tax law defines a taxable possessory interest to be independent, durable, and exclusive.

This bill would provide that an interest or use of a public convention center that is not more than 14 calendar days in a calendar year lacks the durability necessary to constitute a taxable possessory interest in real property.

Section 2229 of the Revenue and Taxation Code requires the Legislature to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them pursuant to the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 107 of the Revenue and Taxation Code is amended to read:

107. “Possessory interests” means the following:

(a) Possession of, claim to, or right to the possession of land or improvements that is independent, durable, and exclusive of rights held by others in the property, except when coupled with ownership of the land or improvements in the same person. For the purposes of this subdivision:

(1) “Independent” means the ability to exercise authority and exert control over the management or operation of the property or improvements, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the property or improvements. A possession or use is independent if the possession or operation of the property is sufficiently autonomous to constitute more than a mere agency.

(2) “Durable” means for a determinable period with a reasonable certainty that the use, possession, or claim with respect to the property or improvements will continue for that period. *Any interest or use of a public convention center that is not more than 14 calendar days in a calendar year lacks the durability necessary to constitute a possessory interest in real property.*

(3) “Exclusive” means the enjoyment of a beneficial use of land or improvements, together with the ability to exclude from occupancy by means of legal process others who may interfere with that enjoyment. For purposes of this paragraph, “exclusive use” includes the following types of use in property:

(A) Sole occupancy or use of property or improvements.

(B) Use as a cotenant.

(C) Concurrent use by a person who has a primary or prevailing right to use property or improvements at any time.

(D) Concurrent uses by persons making qualitatively different uses of property or improvements.

(E) Concurrent use by persons engaged in similar uses that diminish the quantity or quality of the property or improvements.

(F) Concurrent use that does not diminish the quantity or quality of the property or improvements, if the number of those concurrent use grants is restricted.

1 A use of property or improvements that does not contain one of
2 the elements in subparagraphs (A) to (F), inclusive, shall be
3 rebuttably presumed to be a nonexclusive use.

4 (b) Taxable improvements on tax-exempt land.

5 Any possessory interest may, in the discretion of the county
6 board of supervisors, be considered as sufficient security for the
7 payment of any taxes levied thereon and may be placed on the
8 secured roll.

9 Leasehold estates for the production of gas, petroleum and
10 other hydrocarbon substances from beneath the surface of the
11 earth, and other rights relating to these substances ~~which~~ *that*
12 constitute incorporeal hereditaments or profits a prendre, are
13 sufficient security for the payment of taxes levied thereon. These
14 estates and rights shall not be classified as possessory interests,
15 but shall be placed on the secured roll.

16 If the tax on any possessory interest or leasehold estate for the
17 production of gas, petroleum and other hydrocarbon substances is
18 unpaid when any installment of secured taxes become delinquent,
19 the tax collector may use those collection procedures ~~which~~ *that*
20 are available for the collection of assessments on the unsecured
21 roll.

22 If the tax on any possessory interest or leasehold estate for the
23 production of gas, petroleum and other hydrocarbon substances
24 remains unpaid at the time set for the declaration of default for
25 taxes carried on the secured roll, the possessory interest tax
26 together with any penalty and costs ~~which~~ *that* may be accrued
27 thereon while on the secured roll shall be transferred to the
28 unsecured roll.

29 SEC. 2. Notwithstanding Section 2229 of the Revenue and
30 Taxation Code, no appropriation is made by this act and the state
31 shall not reimburse any local agency for any property tax
32 revenues lost by it pursuant to this act.

33 SEC. 3. This act provides for a tax levy within the meaning of
34 Article IV of the Constitution and shall go into immediate effect.